

the Settlement Officer in making the entry under the heading, "custom of pre-emption," did not intend to record it as such.

As remarked above, the other issues have been left undisposed of by the Subordinate Judge.

[The judgement then dealt with the evidence and concluded as follows :—]

The result, therefore, is that we allow the plaintiffs' appeal, and setting aside the decree of the court below decree the plaintiffs' claim for pre-emption.

*Appeal allowed.*

*Before Mr. Justice Sulaiman and Mr. Justice Banerji.*

NIRBAN SINGH (PLAINTIFF) *v.* BARI BITTA AND ANOTHER  
(DEFENDANTS).\*

1927  
April, 19.

*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section III—Partition—Question of title—Compromise of doubtful rights—Writing—Registration.*

The jurisdiction of the civil court to inquire into a claim of title as regards properties which are the subject-matter of a partition in the revenue court arises only under section 111 of the Land Revenue Act. When no suit has been instituted within the time allowed by that section and in compliance with it, the civil court cannot go on with the inquiry.

Under section 111 of the Land Revenue Act, the partition court has power either to decide the question of title itself or direct any party in the case to institute a suit within three months in the civil court for the determination of the question raised. If the party ordered to file a suit within three months fails to do so, under sub-clause (2) of that section the Collector must decide the question against him, and if the suit is instituted, the partition court acts in accordance with the decision of the civil court.

Under no law is a compromise or a mutual settlement between parties required to be reduced into writing, and when

\* First Appeal No. 237 of 1924, from a decree of Gauri Prasad, Subordinate Judge of Pilibhit, dated the 13th of March, 1924.

1927

no writing is absolutely necessary, registration is not compulsory.

NIRBAN  
SINGH

P.  
BARI BITTA.

THIS was a plaintiff's appeal arising out of a suit for a declaration that the plaintiff was, by right of survivorship and according to a mutual settlement, the exclusive and absolute owner in possession of certain zamindari properties consisting of six items set forth in the plaint, and that the principal defendant, Musammat Bari Bitta, had no right of ownership or partition thereto, except to get Rs. 500 a year as maintenance allowance. The case put forward in the plaint was that the plaintiff was a member of a joint Hindu family with the principal defendant's deceased husband, Gobardhan Singh, and that when he died Musammat Bari Bitta did not succeed to his estate as a Hindu widow. It was mentioned that she applied to the revenue court for partition of some villages and the plaintiff objected, with the result that the revenue court referred the plaintiff to the civil court for a declaration of his ownership. The plaintiff, however, alleged that, before he could file a suit, there was a mutual compromise under which it was settled that the defendant would give up all claim to the villages in dispute in the revenue court, as well as other properties which were the subject of dispute in the civil suit, and receive Rs. 500 as maintenance allowance. The contesting defendant pleaded that her husband was separate from the plaintiff and that she had succeeded to his estate as a Hindu widow. She denied that any complete compromise was arrived at between the parties which determined their proprietary title. It was also pleaded that the claim was barred under sections 111 and 233 (*k*) of the Land Revenue Act. The Subordinate Judge did not allow the plaintiff an opportunity to produce oral evidence to prove the alleged compromise. His opinion was that

such a compromise had to be reduced into writing and duly registered, and without such formality it was not enforceable in law. He accordingly excluded all evidence offered by the plaintiff to prove the terms of the compromise. Nevertheless, for purposes of limitation, he recorded a finding that on the evidence he was inclined to hold that there was a compromise from which the defendant subsequently backed out. In his opinion the claim was not barred by limitation, inasmuch as there was something tantamount to a fraud practised by the defendant. The plaintiff's suit failed merely on the ground that there was no registered document. The plaintiff appealed to the High Court.

1927

---

 NIRBAN  
SINGH  
v.  
BARI BITTA.

Mr. *B. E. O'Connor*, Sir *Tej Bahadur Sapru* and Mr. *P. N. Sapru*, for the appellants.

Babu *Piari Lal Banerji*, for the respondents.

The judgement of the Court (SULAIMAN and BANERJI, JJ.), after stating the facts as above, thus continued :—

We are unable to agree with the court below on either of the two main points decided by it.

The question really was not strictly one of limitation coming under the Limitation Act. Even if it were, section 18 of the Limitation Act would hardly be applicable, as that can apply only when the plaintiff has by the fraud of the opposite party been kept from the *knowledge* of his right or title. That obviously was not the case here. The question, however, is not one of limitation in the strict sense of the word. Under section 111 of the Land Revenue Act, the partition court has power either to decide the question of title itself or direct any party in the case to institute a suit within three months in the civil court for the determination of the question raised. If the party ordered to file a suit within three months fails

1927

NIRBAN  
SINGH

v.

BARI BITTA.

to do so, under sub-clause (2) of that section the Collector must decide the question against him. If the suit is instituted, the partition court acts in accordance with the decision of the civil court. It is an admitted fact that the present civil suit was not filed within three months of the order passed by the partition court. On this fact being brought to the notice of the revenue court on the 30th of April, 1923, it held that the objector had failed to file a civil suit and that the partition proceedings should accordingly proceed. That, no doubt, was a decision against him on the question raised by him. When the objector went up in appeal the appellate court came to the same conclusion and held that, no civil suit having been filed within the three months allowed, the procedure of the revenue court in proceeding with the partition was correct. The appeal was accordingly rejected. In our opinion the jurisdiction of the civil court to inquire into a claim of title as regards properties which are the subject-matter of a partition in the revenue court, arises only under section 111. When no suit within the time allowed by that section and in compliance with it has been instituted, the civil court cannot go on with the inquiry. If such a thing were allowed the result may be that the revenue court may ignore the civil court's decree which would be altogether ineffectual and futile. Under these circumstances, it is obvious that section 111 is a bar to the plaintiff's claim as regards the villages which were sought to be partitioned or to which the order referring the objector to the civil court expressly or by necessary implication applied.

Assuming that there was a complete compromise between the parties subsequent to the order of reference to the civil court and the institution of the civil suit, such a compromise could be brought to the notice

of the revenue court itself. Under sub-clause (3) of section 111 that court could have taken into account such a compromise and decided the suit in accordance with it. As a matter of fact, the matter was brought to the notice of the appellate court, which came to the conclusion that the compromise did not relate to the question of title but merely to a settlement of the question of attachment. Having regard to these circumstances, we are of opinion that the present suit, so far as it relates to the properties in dispute in the revenue court, cannot be entertained.

1927

---

 NIRBAN  
SINGH  
v.  
BARI BITTA.

It may follow, further, that the decision of the partition court on the question whether the family was joint or separate must now operate as *res judicata* and that it is no longer open to the plaintiff to contend that the family was joint in respect of the properties in dispute in the revenue court. Such a position would be untenable. It is in view of these circumstances that the learned advocate for the appellant has not pressed grounds Nos. 1, 2 and 7 of the memorandum of appeal.

We, however, do not think that the court below was right in rejecting the oral evidence tendered by the plaintiff. Under no law is a compromise or a mutual settlement between parties required to be reduced into writing. When no writing is absolutely necessary, it is difficult to see how registration would be compulsory. A compromise of this kind does not necessarily amount to a transfer of property. It is more an acknowledgement of the right of a claimant than an actual transfer to him. We, therefore, think that the court below was not right in excluding oral evidence that was offered by the plaintiff to prove the terms of the alleged compromise. It is only after the whole evidence has come on the record that it can be decided

1927

NIRBAN  
SINGH  
P.

BARI BITTA.

whether the alleged compromise had passed the stage of a mere negotiation and whether it had been completed. It is also only then that it can be decided whether it was a necessary part of the compromise that it should be reduced to writing and filed in any court. The defendants in their written statement have admitted that a suit for the partition of Minterpur, Katia and Naugawan, had been instituted in the revenue court.

We accordingly send down the following three issues to the court below :—

(1) Whether there was any complete compromise between the parties as set out in paragraph 11 of the plaint and, if so, what were its actual terms and to what properties it related.

(2) Was it an essential part of this compromise that it should be reduced into writing or that it should be filed in any court of law?

(3) Were any of the villages, Khardhai, Deoria Kalan and Deohanana, in dispute in the partition court?

The parties will be entitled to produce further oral and documentary evidence on the issues remitted. The court below will return the findings, after taking the necessary evidence, by the 15th of July, if convenient.

*Issues remitted.*